

1 ELIZABETH EGAN  
2 DISTRICT ATTORNEY  
3 LISA M. GAMOIAN  
4 CHIEF DEPUTY DISTRICT ATTORNEY  
5 2220 TULARE STREET, SUITE 1000  
6 FRESNO, CALIFORNIA 93721  
7 Telephone: (209) 488-3141

FRESNO COUNTY  
SUPERIOR COURT

04 SEP -7 PM 1:35

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF FRESNO

10 THE PEOPLE OF  
11 THE STATE OF CALIFORNIA,

12 Plaintiff,

13 vs.

14 MARCUS WESSON

) Court Case No. F04901785-6

)

) DA Case No.: 04H9621

)

) PEOPLE'S RESPONSE TO  
) PETITION FOR RETURN OF  
) PROPERTY BY  
) ELIZABETH WESSON

)

) DATE: September 13, 2004

)

) TIME: 9:00 a.m.

)

) DEPT.: 53

)

18 TO: THE HONORABLE JUDGE OF THE ABOVE-ENTITLED COURT,  
19 AND TO THE DEFENDANT AND HIS ATTORNEY OF RECORD  
20 HEREIN:

21 On August 12, 2004 the Court received a "Petition and Order  
22 for Return of Property" filed by Elizabeth Wesson (hereinafter  
23 referred to as petitioner). Petitioner is seeking the return of  
24 (1) "my children's clothing"; (2) "my passport"; and (3) "back  
25 statements & receipts for property." Petitioner also declares  
26 that the aforementioned property was (1) seized without a  
27 warrant; (2) that it is not considered contraband; and (3) that  
28 it has not been accepted by the court as evidence in any case.

1 All property or things taken on a warrant must be retained  
2 by the officer in his custody, subject to the order of the  
3 court to which he is required to return the proceedings  
4 before him, or of any other court in which the offense in  
respect to which the property or things taken is triable.  
(Pen. Code section 1536 (2004).)

5 In order to have a res upon which a motion for return of  
6 property under Penal Code sections 1536 can operate, the  
7 property must have been seized pursuant to the order of the  
8 court or have been marked as an exhibit. (*People v Icenogle*  
9 (1985) 164 Cal.App.3d 620; and see *Coy v. County of Los Angeles*  
10 (1991) 235 Cal.app.3d 1077, 1089.) A defendant is not entitled  
11 to the return of items usable as evidence against the defendant.  
12 (*People v. DeRenzy* (1969) 275 Cal.App.2d 380, 387; as cited by  
13 *Ensoniq v. Superior Court* (1998) 65 Cal.app.4<sup>th</sup> 1537, 1547.)

14 An officer who seizes property under a search warrant does  
15 so on behalf of the court for use in a judicial proceeding.  
16 (*People v. Icenogle* (1985) 164 Cal. App. 3d 620, 623.) "Section  
17 1536 was enacted in order to provide controls over those  
18 officials in possession of property seized pursuant to a search  
19 warrant . . . ." (*People v. Von Villas* (1992) 10 Cal. App. 4th  
20 201, 239.)

21 Other than the petitioner's request for "my passport" the  
22 petition lacks specificity as to particular items and no  
23 information as to the location that the items were taken from.  
24 For purposes of this motion the People can only assume that  
25 petitioner is referring to items seized from 761 W. Hammond,  
26 Fresno, California.

27 Contrary to petitioner's assertion, petitioner's passport  
28 and other items matching the generic descriptions set forth in

1 the petition were seized pursuant to a search warrant. (See  
2 search warrants W-4912037-9 (1) dated March 12, 2004 signed by  
3 the Hon. Judge R.L. Putnam at 8:16 p.m.; (2) March 14, 2004  
4 signed by the Hon. Judge R.L. Putnam at 1:20 p.m. and (3) March  
5 15, 2004 signed by the Hon. Bruce Smith at 5:15 p.m. and their  
6 subsequent returns.) On March 30, 2004 the this court ordered  
7 the warrants and returns sealed, therefore the above documents  
8 are not attached.

9 The items sought by petitioner were seized pursuant to a  
10 search warrant and at this time are considered potential  
11 evidence in the People's case against the defendant Marcus  
12 Wesson. As such the People oppose release of these items  
13 pending the final resolution of the case.

14  
15 Dated: 9-7-, 2004

16  
17  
18  
19 

20 Lisa M. Gamoian  
21 Chief Deputy District Attorney  
22  
23  
24  
25  
26  
27  
28



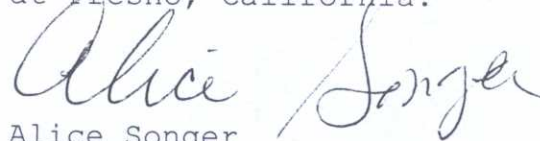
1                   **PROOF OF SERVICE IN PERSON - 1013a, 2015.5 C.C.P.**

2                   I, THE UNDERSIGNED, DECLARE AND SAY;

3                   I am a citizen of the United States and a resident of  
4 the County of Fresno, State of California; I am over the age of  
5 eighteen (18) years, residing or employed in the County of  
6 Fresno, and not a party to the within action; my business  
7 address is Fresno County District Attorney's Office, 2220 Tulare  
8 Street, Suite 1000, Fresno, California, 93721.

9                   On September 7, 2004, I personally served the within  
10 copy of the "People's Response to Petition for Return of  
11 Property by Elizabeth Wesson", in RE: Marcus Delon Wesson,  
12 Fresno County Court Case No. F04901785-6 to: Peter Jones, Fresno  
13 County Public Defender's Office, 2220 Tulare Street, 3<sup>rd</sup> Floor,  
14 Fresno, CA.

15                   I declare, under penalty of perjury, under the laws of  
16 the State of California, that the foregoing is true and correct  
17 and that this declaration was executed this 7th day of  
18 September, 2004, at Fresno, California.

19  
20                   

21                   Alice Songer  
22                   Fresno County District Attorney's Office

23 Received By:

24  
25                     
26                   Fresno County Public Defender's Office

27                   9.7.04

28                   Date

1 PROOF OF SERVICE IN PERSON - 1013a, 2015.5 C.C.P.

2 I, THE UNDERSIGNED, DECLARE AND SAY;

3 I am a citizen of the United States and a resident of  
4 the County of Fresno, State of California; I am over the age of  
5 eighteen (18) years, residing or employed in the County of  
6 Fresno, and not a party to the within action; my business  
7 address is Fresno County District Attorney's Office, 2220 Tulare  
8 Street, Suite 1000, Fresno, California, 93721.

9  
10 On September 7, 2004, I personally served the within  
11 copy of the "People's Response to Petition for Return of  
12 Property by Elizabeth Wesson", in RE: Marcus Delon Wesson,  
13 Fresno County Court Case No. F04901785-6 to: Elizabeth Wesson,  
14 761 W. Hammond Street, Fresno, CA, 93728.

15 I declare, under penalty of perjury, under the laws of  
16 the State of California, that the foregoing is true and correct  
17 and that this declaration was executed this 7th day of  
18 September, 2004, at Fresno, California.

19 *Scot Cheney* 9/7/04.

20 Scot Cheney, Senior Investigator  
21 Fresno County District Attorney's Office  
Homicide Unit

22 Received By:

23 *Left paperwork on front security door*  
*at 761 W. Hammond. Attaching*  
*Business Card w/ instructions to*  
*call within 24 hours. Scot D. Cheney*  
*9/7/04.*

24 ELIZABETH WESSON

25 Date  
26  
27  
28